

February 14, 2006

Dear Chairman Schneider and Members of the Regional Board:

Re: Hilmar Cheese Company, Inc. and Hilmar Whey Protein, Inc., Administrative Civil Liability Complaint No. R5-2005-0501, Proposed Revised Settlement Agreement

At its public meeting on November 29, 2005, Central Valley Regional Water Quality Control Board ("Regional Board") Prosecution Staff ("Prosecution Staff") and dischargers Hilmar Cheese Company, Inc., and Hilmar Whey Protein, Inc. (hereinafter "Hilmar") (collectively the "Parties") presented a proposed settlement agreement dated October 24, 2005, to the Regional Board for its consideration. During that meeting, Regional Board members, as well as the Regional Board's advisory team and members of the public, asked numerous questions and expressed concerns with various aspects of the proposed agreement. At the conclusion of the meeting, the Regional Board directed the Parties to resume negotiations and bring a revised settlement agreement, if one could be reached, to the Regional Board for its consideration at the March 2006 board meeting.

The Parties have reviewed the transcript of the November 29, 2005, meeting as well as the written public comments submitted prior to that meeting. Through continued negotiations, the Parties have reached a Revised Settlement Agreement that reflects the Parties' collective efforts to clarify and address concerns with the earlier settlement agreement.

The primary revisions to the earlier settlement agreement are:

1. Clarification to the Scope of the Regional Board's Release (see Para. 5(a)(1), 5(a)(2) and 5(b));
2. Modification to the Duration of the Scope of the Release and Interim Operating Period (see Para. 5(d), 5(e) and 6); and
3. Modification to the Supplemental Environmental Project (SEP) Study Outline (see Exhibit A to Revised Settlement Agreement).

The Revised Settlement Agreement, together with a redlined version highlighting *all* changes from the October 24, 2005 settlement document, are enclosed and will be posted directly or by link on the Regional Board's web site not later than February 15, 2006. As was the case for the November 29, 2005, meeting, the Central Valley Water Board and the public continue to have available the allegations of the ACL Complaint and Staff Report, the Additional Information Related to Settlement, and the allegations in Hilmar's prepared direct testimony and expert reports in opposition to Prosecution Staff submittals, to facilitate evaluation of the proposed settlement. These documents remain available on the Regional Board's website at [www.waterboards.ca.gov/centralvalley](http://www.waterboards.ca.gov/centralvalley) and can be provided to you upon request. The entire public file for the Hilmar facility is also available if a board member or member of the public desires additional information.

The Parties will include in the agenda materials for the Regional Board's consideration a document that explains how the proposed interim limits were derived and how they reflect the


character and scope of Hilmar's existing discharge. In addition, the Parties are willing to consider allocating a greater amount of the settlement proceeds toward the SEP Study if the Regional Board would like to see more funds directed toward the SEP.

While Prosecution Staff recommends approval of this Revised Settlement Agreement as being appropriate, proper, and in the public interest, rejection of the settlement is a possible outcome. If the Revised Settlement Agreement is rejected, this Board will have to hear and decide the ACL Complaint on the merits. The Parties' belief and understanding is that any questioning of the Parties regarding the settlement will be designed to establish whether the proposed settlement is appropriate, proper, and in the public interest. The Parties reserve their rights to engage in final discovery, and submit additional testimony and briefing that was suspended as a result of the settlement process, should the settlement be rejected and a hearing schedule reestablished. Examples of remaining activities that will need to take place before any hearing of the ACL Complaint on the merits include, without limitation, the following: Prosecution Staff anticipates seven to ten days of additional depositions, including expert depositions, and expert rebuttal of Hilmar's reports. Hilmar anticipates responding to Prosecution Staff's responsive testimony, and may request (to the extent necessary) revisions to the procedural schedule to allow the taking of further depositions and discovery, the preparation and submittal of prepared reply testimony, and the preparation and submittal of a pre-hearing brief marshalling the facts contained in the testimony. Hilmar also reserves the right to submit and obtain rulings on a variety of anticipated pre-hearing motions. Should the Central Valley Water Board reject the settlement, the Parties will be prepared to address the amount of time needed for a revised discovery, briefing, and hearing schedule.

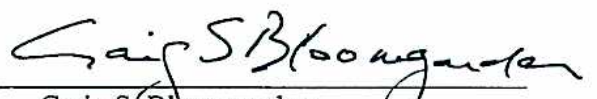
The Parties look forward to the Central Valley Water Board's consideration of the Revised Settlement Agreement at its next meeting.

Respectfully submitted,

PROSECUTION STAFF OF THE CENTRAL  
VALLEY REGIONAL WATER QUALITY  
CONTROL BOARD

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